



TOWN of BROOKLINE

Massachusetts

BOARD OF APPEALS

TOWN OF BROOKLINE
BOARD OF APPEALS
NO. BOA060045

Rabbi Mendy Uminer applied to the Building Commissioner for permission to expand the synagogue known as the Chabad Center of Chestnut Hill, located at 163 Bellingham Road, by converting existing garage space on the first floor for synagogue use, creating a small (5' x 6') vestibule on the West Roxbury Parkway side of the premises and constructing a two story addition (12' x 39'). Said addition would add space to the synagogue on the first floor and create additional living space - a master bedroom and breakfast on the second floor. The application was denied as the proposed addition and conversion violated the Zoning By-Law. An appeal was taken to this Board.

On June 29, 2006 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed the date of September 14th, 2006 at 7:15 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on August 31st and September 7th, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
NOTICE OF HEARING

Pursuant to M.G.L., C. 39, Sections 23A and 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: RABBI MENDY UMINER, CHABAD LUBAVITCH OF CHESTNUT
Location of Premises: **163 BELLINGHAM RD BRKL**
Date of Hearing: **09/14/2006**
Time of Hearing: **07:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a variance and/or a special permit from

- 1) **5.08.2; Exceptions to Dimensional Requirements for Uses 9 and 10; Special Permit Required.**
- 2) **5.20; Floor Area Ratio; Variance Required.**
- 3) **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 4) **5.50; Front Yard Requirements; Variance Required.**
- 5) **5.51; Projections into Front Yards; Variance Required.**
- 6) **5.70; Rear Yard Requirements; Variance Required.**
- 7) **6.04.5 c. 1; Design of All Off-Street Parking Facilities; Variance Required.**
- 8) **8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to
construct renovations and additions
and to convert the former garage into
additional area for the Synagogue and
the Chabad; and to change exterior

at **163 BELLINGHAM RD BRKL**

Said Premise located in a
S-10

district.

The Town of Brookline does not discriminate on the basis of disability in admission to, or access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Diane R. Gordon
Harry Miller
Bailey Silbert

At the time and place specified in the notice a public hearing was held by this Board. Present were Lawrence Kaplan, chairman, Murray Shockett and Sarah Sheldon.

Petitioner was represented by Attorney Jacob Walters of Goldenberg, Walters and Popkewitz of Seven Harvard Street in Brookline. Mr. Walters began with an overview of the applicant's proposal and stated that because of the religious use of the premises as a synagogue, Section 3 of Chapter 40A of the General Laws was applicable. Mr. Walters stated that all the requested relief could be granted by Special Permit, pursuant to Sections 5.08.2, 5.43 and 8.02.2

of the Zoning By-Law. Mr. Walters stated that pursuant to Section 5.08.2, the Board could further modify dimensional requirements for religious institutions to the extent necessary to allow reasonable development for such use. Mr. Walters added that under Section 5.43 the parking setback requirement could be substituted for a lesser setback if the applicant provided counterbalancing amenities which was being done in this instance. Mr. Walters stated that a Special Permit was needed under Section 8.02.2 as the structure was nonconforming and such nonconformity was being extended.

Mr. Walters then addressed the concerns of the only direct abutters, Mr. & Mrs. Allaire who reside at 157 Bellingham Road. Mr. Walters stated that after the Planning Board hearing, Rabbi Uminer met with the Allaires and their attorney Joshua Fox, to discuss how the Chabad Center could work with them. Mr. Walters said that, as a result of the meeting, the following additional conditions had been agreed upon: (a) the Chabad Center and the Allaires would jointly construct and maintain a fence along the property line to provide screening and reduce noise, (b) the Chabad Center will replace three existing windows facing the Allaire property, one on the first floor and two on the second floor, with more soundproof windows. In addition, during any activity of any kind at the synagogue, the first floor window facing the Allaire property will be closed, (c) Rabbi Uminer will instruct all the members of his congregation attending a service, class or function at the synagogue, to enter and exit the synagogue from the vestibule entrance which is located on the side of the building opposite the Allaire property, (d) Rabbi Uminer will encourage those members of his congregation that drive to temple to park on the street in front of 163 Bellingham during services and to not park in front of the Allaire property, (e) the original plan submitted to the Building Department will be modified to eliminate the proposed entrance near 157 Bellingham Road, and (f) Rabbi Uminer will remind the members of his congregation on a regular basis of the agreed upon conditions and encourage them to continue to be good neighbors to all properties in the area.

Mr. Walters referred to several letters of support sent by neighbors of the Chabad Center and stated that Rabbi Uminer has worked hard to be a good neighbor. Mr. Walters cited the provisions of Chapter 40A, Section 3 and stated that the Board could impose reasonable restrictions upon the Chabad Center and suggested that the conditions agreed to more than met the requirements of Chapter 40A. Mr. Walters urged the Board to grant the requested relief.

The Chairman then asked if any members of the public wished to speak in favor of the applicant's proposal. No one came forward. The Chairman then asked if any members of the public wished to speak in opposition. The chair called upon Attorney Joshua Fox, who stated that he represented Alan and Saralynn Allaire, who reside at 157 Bellingham Road and are direct abutters to the synagogue. Attorney Fox stated that, while his clients would prefer to have a single family home as their neighbor, they accept and understand the reality of their situation. Mr. Fox stated that 157 Bellingham Road is approximately 20 - 25 feet from the synagogue and as a result his clients can hear most of the activities that take place next door and sometimes the noise from the temple keeps Mr. & Mrs. Allaire from being able to sleep at night. Attorney Fox

stated that his clients appreciate Rabbi Uminer's efforts and willingness to accept the agreed upon conditions, but mentioned there were issues that have not been resolved. Mr. Fox stated that evening activities at the synagogue disturb his clients and suggested that the Board require that all activities end by 10:00 pm. In addition, Mr. Fox requested that the Board determine the maximum occupancy allowed for the 163 Bellingham Road property and impose a limit on how many persons can attend functions at the synagogue. Mr. Fox concluded by asking the Board to impose the additional conditions for the sake of his clients.

The Chairman then called upon Linda Altman of Valentine Road. Mrs. Altman stated that she purchased her home years ago believing she was moving into a residential neighborhood. Mrs. Altman stated that the existence of the Chabad Center has changed the character of the neighborhood. Mrs. Altman stated that she cannot hear what is going on at Temple Emmeth whereas the noise from the Chabad Center can be heard. Mrs. Altman asked the Board to deny the requested relief.

The Chairman then called upon Alan Altman of Valentine Road. Mr. Altman stated that he had previously submitted a letter of opposition and wondered if the members of the Board had an opportunity to review it. Mr. Altman stated that he had recently reviewed Chapter 40A Section 3 of the General Laws, the so called Dover Amendment, and felt that it was not a certainty under the law that the Chabad Center is allowed to expand. Mr. Altman cited the language of Section 3 setting forth "subject to reasonable restrictions", and stated that an increase in the floor area ratio is not automatic under the Dover Amendment and should not be allowed in this instance.

The Chairman called upon Mr. Abbe Cohen of 160 Bellingham Road. Mr. Cohen stated that he has lived across the street from 163 Bellingham Road for 30 years and the Chabad Center has, in his opinion, changed the character of the neighborhood. Mr. Cohen cited three concerns with the synagogue, namely traffic, safety and noise. Mr. Cohen stated that there are services on Fridays and Saturdays as well as meetings during the week, all of which add to the parking problems in the area. Mr. Cohen stated that due to the number of children attending the Chabad Center, many of whom play outside the building, drivers have to be extra vigilant particularly when cars are parked on both sides of the street affecting visibility. Mr. Cohen stated that the evening meetings and additional car traffic make noise a problem in the neighborhood. Mr. Cohen concluded by asking the Board to deny the applicant's request for relief.

The Chairman then called upon Lorraine Levine of 154 Bellingham Road. Mrs. Levine stated that she wished to echo the remarks of the previous speakers and emphasize that parking and noise are a problem and the addition of the Chabad Center has changed the street for the worse.

The Chairman then called upon Sally Selkoe of the Brookline Planning Department to present the Planning Board report. Ms. Selkoe stated that the Planning Board was pleased to

hear the applicant had met with the abutter and was even more pleased that additional conditions were agreed to in an effort to address noise concerns. Ms. Selkoe stated that four of the five Planning Board members recommend approval of the requested zoning relief and indicated that such relief could be granted by Special Permits under Sections 5.08.2, 5.43 and 8.02.2 of the Zoning By-Law. Ms. Selkoe stated that the fifth member of the Planning Board voted against the proposal feeling that the expansion was unreasonable for the site and neighborhood. Ms. Selkoe concluded by stating that the Planning Board recommends approval of the proposal from plans submitted and stamped by ADF Architects, dated May 12, 2006, with the following conditions:

- (1) Prior to the issuance of a building permit the applicant shall submit a landscaping plan to the Assistant Director of Regulatory Planning for review and approval showing counterbalancing amenity, and
- (2) Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals Decision: (a) a final site plan, stamped and signed by a registered architect or land surveyor, including, fencing, grading and location of utilities, (b) final building elevations showing dimensions stamped and signed by a registered architect, and (c) evidence that the Board of Appeals Decision has been submitted to the Registry of Deeds.

The Chairman then called upon Frank Hitchcock of the Brookline Building Department. Mr. Hitchcock stated that the zoning relief requested could be granted without difficulty, as Section 5.08.2 allows the Board to further alter the dimensional requirements for a religious use, and stated that the floor area relief as well as the front and rear yard setback relief was within the parameters of Section 5.08.2. Mr. Hitchcock added that Section 5.43 allows waiver of the parking set back and Section 8.02.2 relief is needed due to preexisting dimensional deficiencies. Mr. Hitchcock added that the height and width of the house was not being changed due to the addition. Mr. Hitchcock stated that while religious use cannot be restricted, the question of reasonable restrictions can be complicated. Mr. Hitchcock stated that the building code requirements for maximum occupancy for places of assembly depend upon how the use is set up, citing a 7 square foot person requirement in some instances and a 15 square foot per person requirement in other circumstances. Mr. Hitchcock stated that limiting the number of persons at the Chabad Center would help with noise and parking, but was not sure it could be done under the Dover Amendment. Mr. Hitchcock stated that the Zoning By-Law does not require religious institutions to supply parking and the applicant was not cited for parking violations other than the driveway setback. Mr. Hitchcock concluded by stating that the Building Department takes no position on the requested relief and defers to the Board of Appeals.

The Chairman allowed Mr. Walters to give a brief rebuttal. Mr. Walters requested that Rabbi Uminer be allowed to address the Board, and stated further that the purpose of the Dover Amendment was to allow religious institutions to exist where they might otherwise not be

welcome. Mr. Walters stated that without the Dover Amendment virtually no religious institution would be allowed in a neighborhood today. Mr. Walters added that virtually every church or synagogue in Brookline is located in a residential neighborhood and each to some degree creates inconvenience to its neighbors. Mr. Walters concluded by saying that in spite of the inconvenience Brookline is better off with its diverse religious community.

Rabbi Uminer addressed the Board and offered his apologies to any neighbor that has been disturbed by the Chabad Center and offered to meet with individual neighbors to address any complaints. Rabbi Uminer also stated that the general neighborhood resists change, and cited opposition to a new home recently constructed on Bellingham Road. Rabbi Uminer advised the Board that on a typical Friday evening service he had 10 to 15 members of the congregation and approximately 50-55 members on a typical Saturday morning service. The Rabbi further stated that for the high holy days the Chabad Center will rent the Baker School or the Public Library. The Rabbi concluded his remarks by repeating his willingness to work with the neighborhood.

The Board then undertook its deliberations. Murray Shockett stated that he did not see the addition as unreasonable and mentioned that the Board had granted relief for many larger additions over the years. Mr. Shockett went on to say that he was impressed with the ability of the Chabad Center to meet with the abutter and agree on some important conditions. Mr. Shockett concluded by saying with the imposition of restrictions he is in favor of the applicant's proposal.

Sara Sheldon stated that she felt a great deal of sympathy for the neighbors, but felt that the Dover Amendment clearly gives religious institutions such as the Chabad Center the right to exist. Ms. Sheldon added that the requested expansion is not unreasonable given the agreed upon restrictions.

Lawrence Kaplan, the Chairman of the Zoning Board stated that under the original Dover Amendment the Board did not have the right to impose reasonable restrictions whereas now the Board can do so. Mr. Kaplan indicated that the direct abutters comprehensive list of conditions to which the petitioner agreed, and the restrictions the Board will impose are reasonable and make the project less objectionable to the neighborhood. Mr. Kaplan mentioned that since the Zoning By-Law does not regulate parking for religious institutions the Board cannot impose any. Mr. Kaplan concluded by stating that he understands the use can be an imposition upon the neighborhood, but in light of the Dover Amendment and the agreed upon restrictions the petitioner has provided as much relief to the neighborhood as possible.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant special permits under Sections 5.08.2, 5.43 and 8.02.2 to allow the conversion of the existing garage into space for the synagogue, the creation of a small vestibule and the creation of a two story addition providing additional worship space on the first floor and

a master bedroom and breakfast area on the second floor. The approval was granted with the following conditions:

1. The petitioner shall consult the abutter at 157 Bellingham Road to provide a joint fence along the property line, the cost and maintenance of said fence to be shared by the respective properties.
2. Three new, more sound proof windows shall be installed on the side of the subject property closest to 157 Bellingham Road, one on the first floor and two on the second floor. The window on the first floor window shall be closed any time the synagogue is being occupied for meetings, services or other activities.
3. The petitioner shall instruct and encourage members of the synagogue to use the new vestibule door facing the VFW Parkway for ingress and egress to the synagogue in order to keep outside noise levels to a minimum, particularly after any evening functions at the synagogue so as to not unreasonably disturb the immediate abutters.
4. The petitioner shall encourage and allow members of the congregation to park automobiles on the street in front of the driveway at 163 Bellingham Road during services, meetings and other temple functions and shall request and encourage the congregation not to park in front of the homes of the immediate neighbors.
5. The original plan submitted to the Building Department shall be amended to eliminate the proposed new door on the front corner of the building closest to 157 Bellingham Road.
6. The petitioner shall retain garage doors at the front of the premises.
7. The petitioner agrees to advise and encourage those of his congregation who drive to be respectful of the neighborhood and not park in or close to driveways, and to keep noise levels to a minimum when walking to and from their vehicles particularly after an evening function at the synagogue. The petitioner further agrees to post or remind the congregation of the conditions agreed upon and set forth herein, on a regular basis.
8. Prior to the issuance of a building permit, the applicant shall submit a landscaping plan, developed in consultation with the immediate abutters, to the Assistant Director of Regulatory Planning for review and approval to serve as the counterbalancing amenity.
9. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision:
 - a) a final site plan showing dimensions stamped and signed by a registered land surveyor;
 - b) final building elevations and floor plans stamped by a registered architect and c)evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

10. Prior to obtaining a building permit, the applicant shall submit to the Assistant Director of Regulatory Planning final, accurate and measured plans for review and approval.

Unanimous decision of
the Board of Appeals

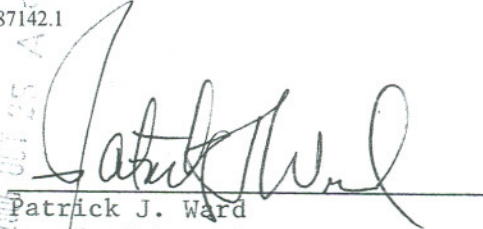

Lawrence E. Kaplan, Chairman

Date of Filing: October 25, 2006

A True Copy:

ATTEST:

LIBD/1887142.1


Patrick J. Ward
Board of Appeals